

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5978 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

NARSHI MAVJIUHAHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR HJ NANAVATI for Petitioner

Mr.S.T.Mehta AGP for Respondent No. 1

RULE SERVED for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 25/11/1999

ORAL JUDGEMENT

#. This is a petition under articles 226/227 of the Constitution of India by which the petitioner has challenged the legality and validity of the order dated 15.7.1987 passed by the Secretary (Appeals) Revenue Department, Government of Gujarat in Revision Application which was preferred by the present petitioner under

section 211 of the Bombay Land Revenue Code. The Secretary (Appeals) had dismissed said revision application and confirmed the order of the Deputy Collector, Amreli.

#. The facts leading to the present petition are as under:

According to the petitioner there is a land bearing survey number 502 admeasuring about 8 acres situated at village Mota Devalia of Babra Taluka in Amreli district. According to the petitioner, said land originally belonged to one Mohan Dharamsi. The petitioner had purchased the said piece of land from Mohan Dharamsi in the year 1974. It seems that present petitioner had not paid the amount of premium of Rs. 9658.72 p. There were some audit objections from the office of the Accountant General and ultimately thereafter, the Deputy Collector had initiated the proceedings for breach of conditions. The Deputy Collector, thereafter initiated proceedings under the provisions of sections 73/73A of the Bombay Land Revenue Code as Case No.85/86 and ultimately the Deputy Collector, Amreli passed an order dated 31.7.1986 treating the said transaction as null and void and ineffective on the ground that said transaction was made without prior approval and the land was ordered to be forfeited to Government and Mamlatdar was directed to take possession of the land. Aforesaid order is at Annexure.A to the petition. A Revision Application was filed under section 211 of the Bombay Land Revenue Code by the petitioner challenging the aforesaid order of the Deputy Collector before the Secretary (Appeals). Said Revision Application was heard by the Secretary(Appeals) Revenue Department, Gujarat State and by his order dated 23.3.1987 he dismissed said Revision Application and confirmed the order of the Deputy Collector. Said order of the Secretary (Appeals) is produced at Annexure.B to the petition. Both the aforesaid orders are impugned in this SCA. This court while issuing notice had also granted interim relief by the order dated 17.11.1987. Subsequently the matter was admitted and interim relief was confirmed. Present petitioner therefore is in possession of the said land all through out. At the time of hearing of this petition Mr. H.J.Nanavati, learned advocate for the petitioner has argued that the order of the Collector which was confirmed in Revision by the Secretary(Appeals) is bad in law inasmuch even though the transaction was of the year 1974, the proceedings for cancelling the said transaction was initiated by the Collector after a period of more than 10 years. That the

Government should have initiated proceedings in question within reasonable time. That there is no justification for such inordinate delay for 10 years for cancelling the transaction in question especially when the document of was a registered document and that therefore, it cannot be said that the authority had no knowledge about the said transaction. It was also pointed out that the petitioner had invested large amount in developing the land in question and therefore, also it was not proper to exercise powers after such a long time. It was also submitted by Mr. Nanavati that the authorities below committed error of fact in coming to the conclusion that the land in question was a new tenure land and according to the petitioner, the land in question was old tenure land and that the petitioner had purchased the aforesaid land as he was under the impression that it was an old tenure land. It has been further argued by Mr. Nanavati that originally one Mohan Dharamsi had purchased the said land in public auction by getting the same converted into old tenure land and that the same was purchased by him on 3.1.1961 as old tenure land and that the petitioner had purchased the said land as back as on 27.2.1974 after 13 years from 1961. Therefore, he has purchased the said land after 12 years from the original owner and therefore, according to him even if there is any reference in the revenue record that this is a new tenure land, without further inquiry it cannot be said to be a new tenure land. On that point he relied on the Government circular at Annexure-C page 20 of the petition which is a circular of Government of Bombay dated 21.9.1955. Though in the heading of the circular date of issue of the circular is mentioned as 21.9.1985, Mr. Nanavati submitted the circular is dated 21.9.1955.

#. Mr. S.T.Mehta learned AGP has opposed the petition by stating that no doubt the proceedings for cancellation of the transaction in question is initiated after a period of more than 10 years, there were some remarks from the department to the effect that whenever land held on new and impartible tenure is sold the premium at the rate of 50 percent of the difference between market price of the and and aggregate amount or original occupancy price paid and expenditure incurred on permanent improvements of land if any is payable to the Government. During the course of local audit of land revenue accounts maintained by TDO, Babra, conducted in November 1978 it was noticed that in village Mota-Devalia of Babra taluka , the land admeasuring 8 acres of S.No.502 was allotted to Mohan Dharamsi on payment of occupancy price of Rs. 682.56 vide Dy.Collector, Amreli's order No.(Nil) dated 3.2.61 under the New and Impartible tenures which was

sold to the present petitioner for a consideration of Rs. 20,000/- and as per the aforesaid audit objections, in view of the Government Resolution, Revenue Department dated 24.11.1970, the party was required to pay premium on the sale of the land to the extent of Rs. 9658.72 p. On the basis of the aforesaid audit report, the concerned Mamlatdar, Babra ultimately submitted all the papers by preparing his notes on 23.1.1986 to the Deputy Collector, Amreli and that is how the proceedings were started by the Deputy Collector. Ultimately, the aforesaid facts came to the notice when proceedings were initiated by the Collector for cancellation of the aforesaid transaction.

#. The original owner who sold the land to the petitioner had expired and therefore, his son was also joined as a party by the authority below.

#. I have heard the learned advocate for the petitioner as well as the learned AGP for the respondent Government. There are certain things which are not in dispute. That the transaction in question was by way of a registered sale deed which was executed in the year 1974. Therefore, considerable time has passed till the transaction in question was subjected to cancellation by the Deputy Collector. That as stated by the petitioner he had spent large amount in between for developing the land in question. It was also submitted that the land in question was old tenure land that there was no breach in the condition and therefore, the forfeiture of the land in question is illegal and there was no justification for the same. It was also stated that before the authority the petitioner had also shown his willingness to pay the amount of premium for which the audit objections came to be raised. The petitioner also stated that on his paying the premium, his possession should be regularised especially when he was cultivating the land in question since many years. On behalf of the petitioner, reference was also made to the decision of the Supreme Court reported in 10 GLR 992 in the case of State of Gujarat vs. Patel Raghav Natha & ors. It was therefore submitted that such powers should not have been exercised after such a long period. It is indeed true that the transaction in question was by way of a registered sale deed and it is very difficult to believe that the officers in the Revenue Department were not aware of the transaction in question. Even after giving effect to the transaction by the Revenue Department, for a considerable time, no action was taken for cancelling the aforesaid transaction. It is difficult to believe that till there was an audit objection, the authority would not be aware about the transaction in question or even regarding the

nature of tenure of the land in question. In view of the fact that after the transaction in question, the petitioner has developed the land and has spent considerable amount and he was also cultivating the land in question since long and after a long time thereafter, the proceedings were initiated and the land in question was ordered to be forfeited. When there was a registered document of sale it can be presumed that the authority is supposed to have knowledge about the transaction in question or atleast supposed to have constructive notice about the same. Not only that even in the revenue records the entry of the aforesaid transaction was effected. Therefore, simply because there was audit objection itself is no ground to exercise the aforesaid powers at any point of point of time. In the order at Annexure.A page 14 it is mentioned by the Deputy Collector that the entry of the said transaction of sale is already entered in the revenue record on 30.4.1974 and said entry was certified on 30.10.74. Therefore, when there is already an entry as regards the said transaction, there is no reason to cancel the said transaction after a period of about more than 10-11 years. However, present petitioner has already admitted before the authorities below that whatever may be the amount of premium, he is willing to pay the same. In fact said willingness was also shown before the Secretary(Appeals). Therefore, looking to the fact that the petitioner was in possession of the land since a considerable period, the Secretary(Appeals) should have regularised the possession of the petitioner instead of forfeiting the land to the State Government. In view of the aforesaid settled legal position about the initiation of the proceedings within reasonable time, I am of the opinion that by no stretch of imagination it can be said that there is any justification for initiating the proceedings after such a long period of delay for cancelling the transaction in question which has taken place in the year 1974 . Therefore, the impugned order of forfeiture of the land is required to be struck down. In fact, if the petitioner had not paid the premium it was the duty of the concerned authority to take steps for recovering the premium by making proper demand for the same. However, now looking to the fact that the land is in possession of the petitioner since considerable time, there was no justification for cancelling the transaction after such a long time and no satisfactory explanation was given for the same by the respondent authorities for the same. In the circumstances, the matter is required to be sent back to the Collector, Amreli so that he can pass appropriate orders regularising the land in question on payment of required premium as the petitioner remained

in possession of the land for a considerable time.

#. In the circumstances the matter is required to be remanded back to the Collector for passing appropriate order of regularisation and retention of possession of the land in question, on payment of required premium by the petitioner.

#. With the aforesaid observations, the matter is remanded back to the Collector, Amreli and he is directed to pass appropriate orders in accordance with law and in view of the observations made in this judgment, preferably within 3 months from the date of receipt of the writ of this court. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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